

No. 12057

United States
Court of Appeals
for the Ninth Circuit

NATIONAL UNION OF MARINE COOKS AND
STEWARDS, an unincorporated association,
Appellant,

vs.

MATSON NAVIGATION COMPANY,
a corporation,
Appellee.

Transcript of Record

Appeal from the District Court of the United States
for the Northern District of California
Southern Division

NOV 1 - 1948

PAUL P. O'BRIEN,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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SAWYER,

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San Francisco, California,

Attorneys for Defendant and Appellant.

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111 Sutter Street,
San Francisco, California,

Attorneys for Plaintiff and Appellee.

In the District Court of the United States for the
Northern District of California,
Southern Division

No. 27856-G

MATSON NAVIGATION COMPANY,
Plaintiff,

vs.

NATIONAL UNION OF MARINE COOKS AND
STEWARDS, an unincorporated association,
Defendant.

ACTION FOR DAMAGES FOR BREACH OF
CONTRACT UNDER THE LABOR MAN-
AGEMENT RELATIONS ACT OF 1947.

The action arises under the Labor Management Relations Act of 1947, Chapter 120, Public Law 101, Title III, Section 301, hereinafter referred to as 'the Act'. Matson Navigation Company, a corporation, for cause of action against National Union of Marine Cooks and Stewards, an unincorporated association, alleges:

I.

Matson Navigation Company, plaintiff herein, was at all times mentioned in this complaint, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of California, and doing business therein.

Plaintiff is and at all times herein mentioned has been the owner and operator of the vessel SS. Hawaiian Craftsman. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

II.

National Union of Marine Cooks and Stewards, defendant herein, is and at all time mentioned herein has been an unincorporated association composed of employees performing work in the Stewards' Department of vessels, including those operated by plaintiff, sailing out of Pacific Coast ports of the United States to other American ports and ports of foreign countries upon the high seas and upon navigable waters of the United States. Defendant is and at all times herein mentioned has been a labor union or labor organization with its principal office and place of business in the City and County of San Francisco in the Northern District of California, and is and at all times herein mentioned has been engaged in its business and activities as a labor union or organization in the City and County of San Francisco in the Northern District of California. Defendant is hereinafter sometimes referred to as the "Union". Defendant at all times herein mentioned represented members of the Stewards' Department of the SS Hawaiian Craftsman as a labor organization and collective bargaining agent in accordance with the provisions of the agreement hereinafter set forth.

III.

On or about November 26, 1946, plaintiff and defendant made and entered into a certain contract providing for and fixing, among other things, the wages, hours, working conditions and other conditions of employment of the personnel employed by plaintiff in the Stewards' Department of ves-

sels operated by plaintiff, including the vessel SS Hawaiian Craftsman. Said contract is one of maritime services, and was entered into between plaintiff, as employer, and defendant, which is [2] a labor organization representing employees in the shipping industry, an industry affecting commerce as defined in the Act. A true and correct copy of said contract is attached hereto as Exhibit A and made a part hereof by reference. Said contract and the provisions thereof were in full force and effect at all times mentioned herein.

IV.

In and by said contract the plaintiff agrees "to give preference in employment to members of the Union and to secure employees in their Stewards' Department through the offices of the Union", and the defendant agrees "to furnish capable, competent and satisfactory employees" to plaintiff. Said contract further provides that there "shall be no strikes, lockouts or stoppages of work while the provisions of this agreement are in effect."

V.

On December 30, 1947, on or about 9:00 a.m., said steamship Hawaiian Craftsman was lying in the navigable waters of the United States in the port of Tacoma, Washington, and was being prepared and made ready for a voyage shortly to commence from said port to the port of Portland, Oregon. At said time and place plaintiff submitted to the employees in the Stewards' Department of said vessel for signature, and requested that they sign, shipping articles in the customary form for said voyage, but defendant instructed, and had in-

structed, the said employees in the Stewards' Department of said vessel to refuse to sign said shipping articles until and unless plaintiff should agree to pay to certain of said Stewards' Department crew members certain overtime pay for a previous voyage of said vessel. Pursuant to said instructions given them by defendant, as [3] aforesaid, and in violation of the said contract, the crew members of the Stewards' Department of said vessel refused to sign said shipping articles and to sail said vessel. Defendant from December 30, 1947, as aforesaid, to 6:17 p.m. January 10, 1948, violated its contract by engaging in a strike and stoppage of work against plaintiff during said period and by failing and refusing to furnish Stewards' Department employees to plaintiff as required by the said contract.

VI.

At all times herein mentioned defendant maintained at Seattle, Washington, an office or hiring hall for the purpose of furnishing and dispatching Stewards' Department crew members to vessels in the Puget Sound area, including vessels at the port of Tacoma, Washington. From time to time during the period from December 29, 1947 to January 10, 1948, inclusive, plaintiff requested defendant, in accordance with said contract, by orders placed with said office or hiring hall and otherwise, to furnish Stewards' Department employees to man and sail said vessel, but defendant, in violation of said contract, failed and refused to furnish plaintiff with said employees as aforesaid.

VII.

Said vessel completed loading at Tacoma, Wash-

ington on or before 6:00 p.m. of January 2, 1948, and was then and there ready and scheduled to depart. Because of the failure and refusal of defendant to man and sail said vessel, and because of defendant's strike and stoppage of work, said vessel was prevented by defendant from departing from said port until 6:17 p.m. January 10, 1948. As a direct and proximate result of [4] said failure and refusal of defendant to man said vessel and the strike and stoppage of work by defendant resulting in the delay and detention of said vessel as aforesaid, all in violation of said contract, plaintiff has been damaged in the amount of \$17,000.

VIII.

Plaintiff has at all times performed all conditions precedent provided or required by the contract herein referred to and has performed each and all of the obligations under said contract.

Wherefore, plaintiff demands judgment in the sum of \$17,000, with interest thereon at the legal rate from January 15, 1948, to the date of payment, and the costs of this action.

BROBECK, PHLEGER &
HARRISON,

/s/ MARION B. PLANT,
Attorneys for Plaintiff.

(Here follows agreement between National Union of Marine Cooks and Stewards and Pacific American Shipowners Association dated: November 26, 1946—Exhibit A.)

[Endorsed]: Filed Jan. 15, 1948. [5]

[Title of District Court and Cause.]

MOTION FOR STAY OF PROCEEDINGS

Comes now the defendant above named and, for the reasons and upon the grounds hereinafter set forth, moves the above entitled Court for its order staying proceedings herein pursuant to Section 3 of the Federal Arbitration Act (9 U.S.C.A. § 3).

Said motion is made upon the grounds that it appears from the face of the complaint on file herein, and the exhibit attached thereto, that one or more issues are presented which are referable to arbitration under a written collective bargaining agreement.

Said motion is based upon the said written collective bargaining agreement, a copy of which is attached to said complaint as an exhibit, and upon a Memorandum of Points and Authorities herewith submitted.

Said motion is further based upon the fact, which said defendant hereby asserts to be true, that the said defendant (applicant in this motion) is not in default in proceeding with said arbitration under said collective agreement. [6]

Dated: This 8th day of April, 1948.

**GLADSTEIN, ANDERSEN,
RESNER & SAWYER,**

**By RICHARD GLADSTEIN,
Attorneys for Defendant.**

**Memorandum of Points and Authorities
9 U.S.C.A. § 3**

Agostine Bros. Building Corp. vs. U.S., 142
Fed. (2d) 854 (4th Circuit)

Gerald Donahue vs. Susequehana Collieries
Co., 138 Fed. (2d) 3 (3rd Circuit)

Shanferoque Coal & Supply Co. vs. Westchester Service Co., 70 Fed. (2d) 297 (2nd Circuit)

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Apr. 8, 1948. [7]

In the United States District Court, for the Northern District of California, Southern Division

No. 27856-G

MATSON NAVIGATION COMPANY,

vs. Plaintiff,

NATIONAL UNION OF MARINE COOKS

AND STEWARDS, ETC., Defendant.

ORDER DENYING MOTION TO STAY PROCEEDINGS PENDING ARBITRATION

The Federal Arbitration Act of February 12, 1923 (9 USC § 1 et seq.) is not applicable to actions maintained, as in this cause, pursuant to § 301 of the National Labor Management Relations Act of 1947, Pub. Law 101, 80th Cong. C. 120. Colonial Hardwood Flooring Co. v. International Union United Furniture Workers of America, et al. 76 Fed. Supp. 493.

The action to stay proceedings is denied.

Dated: May 12, 1948.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed May 12, 1948. [8]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that National Union of Marine Cooks and Stewards, an unincorporated association, defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order of the above entitled court denying motion to stay proceedings pending arbitration, entered in this action on the 12th day of May, 1948.

Dated this 25th day of May, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
/s/ RICHARD GLADSTEIN,

By /s/ NORMAN LEONARD,
Attorneys for Defendant.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed June 9, 1948. [9]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now National Union of Marine Cooks and Stewards, an unincorporated association, defendant and appellant herein and designates the following as the record on appeal in the above entitled matter:

1. Complaint for damages, for breach of contract under the Labor-Management Relations Act

of 1947, filed herein on January 15, 1948, and Sections 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 15, 16, 17, 18 and 20 of Exhibit A attached to said complaint.

2. Motion for Stay of Proceedings filed herein on April 8, 1948.

3. Order Denying Motion to Stay Proceedings Pending Arbitration filed herein May 12, 1948.

4. Notice of Appeal filed herein June 9, 1948.

5. This Designation of Record on Appeal dated June 11th, 1948.

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ RICHARD GLADSTEIN,

By /s/ NORMAN LEONARD,
Attorneys for Defendant.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed June 12, 1948.] [10]

[Title of District Court and Cause.]

DESIGNATION BY PLAINTIFF AND RE-
SPONDENT OF ADDITIONAL PORTIONS
OF RECORD ON APPEAL.

Plaintiff and respondent, Matson Navigation Company, hereby designates the following portions of the record in the above action in addition to those designated by defendant and appellant in its Designation of Record on Appeal on file herein:

1. All of Exhibit A attached to the Complaint on file herein.

2. This Designation by Plaintiff and Respondent of Additional Portions of Record on Appeal.

Dated: June 18, 1948.

BROBECK, PHLEGER &
HARRISON,

By ROBERT E. BURNS,
Attorneys for Plaintiff and
Respondent.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed June 18, 1948. [11]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby ordered that the Appellant herein may have to and including August 28, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: July 19, 1948.

DAL M. LEMMON,
United States District Judge.

[Endorsed]: Filed June 19, 1948. [12]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby ordered that the Appellant herein may have to and including September 7, 1948, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: August 26, 1948.

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Aug. 26, 1948. [13]

District Court of the United States,
Northern District of California

CLERK'S CERTIFICATE

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 13 pages, numbered 1 to 13, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Matson Navigation Company, Plaintiff, vs. National Union of Marine Cooks and Stewards, an unincorporated association, Defendant, No. 27856-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.50 and that the said amount

has been paid to me by the Attorney for the appellant herein.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 7th day of September, A.D. 1948.

(Seal)

C. W. CALBREATH,

Clerk. [14]

[Endorsed]: No. 12057. United States Court of Appeals for the Ninth Circuit. National Union of Marine Cooks and Stewards, an unincorporated association, Appellant, vs. Matson Navigation Company, a corporation, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 7, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

